1948. **File No.** O/I.L.A./48

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Subject:—

Opinion on the Cases under the Indian Limitation Act, 1948.

P.4/E

File No. O/I.L.A./48

Gen. 194 e.

G/9/48

C O N T E N T S .

Legal Department File No. O. / I L A /48.

Sr.No.	R. I. / O. No.	Subject	Pages .
		Opinion on cases under the Indian Limitation Act	
1).	5911 24-6-1948	The Indian Carriage of Goods by Sea Act 1925 . Article III‡ short landing of ' 2 bags of rice and 37 bags of cotton seeds • 1) Whether the failure on t he part of Government to serve notice in writing on the shipping co. of m/s Mackinon Mackenzie & Co. regarding the loss of goods within 3 days after the date of delivery of the goods puts an end to the right of the Govt. to claim compensation (2) Whether the suit if main-tenable would be time-barred one year after the date of -delivery of goods.	1-2.
2).	G/690 3/12/1948	Article 97 Limitation period for failing a suit for the refund of the amount wrongly paid.	3-4.

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As the claim is of a date prior to 15th August 1947 when Karachi was a port in British India, the provisions of the Indian Carriage of Goods by Sea Act, 1925, are applicable in this case.

As 2 bags of rice and 37 bags of cotton seeds were found to be short landed the notice of this loss or damage caused to the shipper should have been given to the carrier or his agent within 3 days of the taking of its delivery as required by clause 6 of Article III in the Schedule appended to the said Act. However failure to lodge the claim within that time would not prejudice the claim of Government Clause 6 of Article III above said provides that unless such claim is lodged within 3 days of the ~~taking~~ taking of the delivery, the removal shall be prima facie evidence of the delivery by the carrier of the goods described in the bill of lading . This evidence can be rebutted by leading other evidence such as the evidence of the Manager, Bombay Port Trust etc. regarding the short landing.

In this case M/s Mackinnon Mackenzie the agents of the British India Steam Navigation Co., Ltd. have not refused to admit Government 's claim for Rs. 452-5-3 in respect of the short landing of 2 bags of rice and 37 bags of cotton seeds. They have only stated that they are making enquiries in the matter. However para 3 of clause 6 of Article III in the Schedule to the Indian Carriage of Goods by Sea Act, 1925 provides that in any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

The ship S.S. Kandua landed with the goods on 7th July 1947 and it is stated in the office note of the Director of Civil Supplies (Accounts) Office that that may be taken as the date of the delivery of the goods. Government's claim against the carrier and the ship would therefore be extinguished if the suit is not filed before 6th July 1948. A token payment by the carrier of his agent would not extend the period of limitation by another year, unless the claim of Government is acknowledged in writing. Nor would the period of limitation be extended by M/s. Mackinon Mackenzie & Co's asking the Director of Civil Supplies (Accounts) to make an affidavit.

A notice of suit may be given immediately and if the payment is not made then a suit may be filed before 6th July 1948. The Solicitor to Government in Legal Department will do the needful.

Id/- P.M.L.
dt/- 23/6/

Remembrancer of Legal Affairs.

U.O.R. to D.C.S. (A/cs) No. 5911, dated the 24th June 1948.

V.V.K. 10/6/56,

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Office of the R.L.A.

Financial Rule 30(a) has no application to the present case. A suit for the refund of the amount wrongly paid is governed by Article 97 of the Limitation Act and such suit must be filed within three years from the date on which the mistake is discovered. The mistake can be deemed to have been discovered in the present case on 24-5-1945 when the applicant was given a producer's licence on payment of Rs. 5 and the claim made by him on 29-6-48 is obviously time barred. Since however the amount claimed is small and it was deposited for the issue of a license, Government may refund it without raising the bar of limitation.

Id/- P.M.L.
dt/- 3/12/

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. P1690 , dated the 3rd December 1948.

V.V.K. 10/7/56/

SC.